

Introduced by Senator PavleyFebruary 17, 2011

An act to add Sections 953.5 and 14409.5 to the Financial Code, and to amend Section 368 of the Penal Code, relating to banks and credit unions.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as introduced, Pavley. Banks and credit unions: signature stamps.

Existing law, the Banking Law, regulates the organization and operations of state-organized banks, and the California Credit Union Law regulates the organization and operation of credit unions, the willful violation of which is a crime. Existing law does not regulate the issuance or use of a signature stamp in financial transactions.

This bill would define "signature stamp" and regulate the issuance of a signature stamp by a state-organized bank or credit union to an accountholder and the use of the signature stamp by the accountholder in financial transactions with a bank or credit union.

Existing law prohibits various types of elder abuse, punishable by incarceration, fines, or both incarceration and fines, including imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, for specified types of abuse involving theft, embezzlement, forgery, fraud, or identity theft.

This bill would add to those offenses the use of a signature stamp in a financial transaction without the express written authorization of a stamp holder who is an elder or dependant adult, as specified. The bill would increase the amount of each of the fines otherwise imposed for the existing law offenses, and would provide that the additional fine

amount be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense.

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 953.5 is added to the Financial Code, to
2 read:

3 953.5. (a) As used in this section, “signature stamp” means a
4 rubber or other synthetic stamp or device that is used to accurately
5 imitate the signature of an individual.

6 (b) A bank shall only issue a signature stamp to an existing
7 accountholder if either (1) the accountholder is present to request
8 the stamp, or (2) the requesting accountholder’s signature has been
9 notarized on an appropriate form.

10 (c) A bank that issues a signature stamp to an accountholder
11 shall (1) inform the accountholder of the risks associated with loss
12 or misuse of the signature stamp, and (2) specify, in consultation
13 with the accountholder, a maximum dollar amount that may be
14 withdrawn in a single transaction authorized by the accountholder
15 by use of the signature stamp.

16 (d) A bank shall only open a new account for a person using a
17 signature stamp to open the account if an employee of the bank
18 witnesses the affixing of the stamp by the stampholder or person
19 assisting the stampholder in the stampholder’s presence.

20 (e) A bank shall only grant a primary accountholder’s request
21 to add an additional signatory authority to an existing account if
22 either (1) an employee of the bank witnesses the affixing of the
23 stamp by the stampholder or person assisting the stampholder in
24 the stampholder’s presence, or (2) the requesting accountholder’s
25 signature has been notarized on an appropriate form.

1 (f) A bank shall only issue a Medallion Signature Guarantee
2 requested by use of a signature stamp, if an employee of the bank
3 witnesses and acknowledges in writing that the signature stamp
4 was affixed by the stampholder or person assisting the stampholder
5 in the stampholder's presence.

6 SEC. 2. Section 14409.5 is added to the Financial Code, to
7 read:

8 14409.5. (a) As used in this section, "signature stamp" means
9 a rubber or other synthetic stamp or device that is used to accurately
10 imitate the signature of an individual.

11 (b) A credit union shall only issue a signature stamp to an
12 existing accountholder if either (1) the accountholder is present to
13 request the stamp, or (2) the requesting accountholder's signature
14 has been notarized on an appropriate form.

15 (c) A credit union that issues a signature stamp to an
16 accountholder shall (1) inform the accountholder of the risks
17 associated with loss or misuse of the signature stamp, and (2)
18 specify, in consultation with the accountholder, a maximum dollar
19 amount that may be withdrawn in a single transaction authorized
20 by the accountholder by use of the signature stamp.

21 (d) A credit union shall only open a new account for a person
22 using a signature stamp to open the account if an employee of the
23 credit union witnesses the affixing of the stamp by the stampholder
24 or person assisting the stampholder in the stampholder's presence.

25 (e) A credit union shall only grant a primary accountholder's
26 request to add an additional signatory authority to an existing
27 account if either (1) an employee of the credit union witnesses the
28 affixing of the stamp by the stampholder or person assisting the
29 stampholder in the stampholder's presence, or (2) the requesting
30 accountholder's signature has been notarized on an appropriate
31 form.

32 (f) A credit union shall only issue a Medallion Signature
33 Guarantee requested by use of a signature stamp, if an employee
34 of the credit union witnesses and acknowledges in writing that the
35 signature stamp was affixed by the stampholder or person assisting
36 the stampholder in the stampholder's presence.

37 (g) Any person who knowingly violates the provisions of this
38 section, shall be subject to all of the applicable penalties set forth
39 in subdivisions (d) and (e) of Section 368 of the Penal Code, and
40 shall be held liable for restitution of all funds fraudulently obtained

1 in violation of this section, including the monetary value of any
2 goods or services obtained using funds obtained in violation of
3 this section.

4 SEC. 3. Section 368 of the Penal Code is amended to read:

5 368. (a) The Legislature finds and declares that crimes against
6 elders and dependent adults are deserving of special consideration
7 and protection, not unlike the special protections provided for
8 minor children, because elders and dependent adults may be
9 confused, on various medications, mentally or physically impaired,
10 or incompetent, and therefore less able to protect themselves, to
11 understand or report criminal conduct, or to testify in court
12 proceedings on their own behalf.

13 (b) (1) Any person who knows or reasonably should know that
14 a person is an elder or dependent adult and who, under
15 circumstances or conditions likely to produce great bodily harm
16 or death, willfully causes or permits any elder or dependent adult
17 to suffer, or inflicts thereon unjustifiable physical pain or mental
18 suffering, or having the care or custody of any elder or dependent
19 adult, willfully causes or permits the person or health of the elder
20 or dependent adult to be injured, or willfully causes or permits the
21 elder or dependent adult to be placed in a situation in which his or
22 her person or health is endangered, is punishable by imprisonment
23 in a county jail not exceeding one year, or by a fine not to exceed
24 ~~six thousand dollars (\$6,000)~~ *twelve thousand dollars (\$12,000)*,
25 *50 percent of which shall be allocated to the adult protective*
26 *services agency, or equivalent elder abuse prevention agency, of*
27 *the county prosecuting the offense*, or by both that fine and
28 imprisonment, or by imprisonment in the state prison for two,
29 three, or four years.

30 (2) If in the commission of an offense described in paragraph
31 (1), the victim suffers great bodily injury, as defined in Section
32 12022.7, the defendant shall receive an additional term in the state
33 prison as follows:

34 (A) Three years if the victim is under 70 years of age.

35 (B) Five years if the victim is 70 years of age or older.

36 (3) If in the commission of an offense described in paragraph
37 (1), the defendant proximately causes the death of the victim, the
38 defendant shall receive an additional term in the state prison as
39 follows:

40 (A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed ~~two thousand dollars (\$2,000)~~ *four thousand dollars (\$4,000), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense*, or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, *or who uses a signature stamp, as defined in subdivision (a) of Sections 953.5 and 14409.5 of the Financial Code, in a financial transaction without the knowledge and express written authorization of the stamp holder; in each case*, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950); and by a fine not exceeding ~~one thousand dollars (\$1,000)~~ *two thousand dollars (\$2,000), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense*, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, *or who uses a signature stamp, as defined in subdivision (a) of Sections 953.5 and 14409.5 of the Financial Code, in a financial transaction without the express written authorization of the stamp holder; in each case*, with respect to the property or personal identifying information of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950), and by a fine not exceeding ~~one thousand dollars (\$1,000)~~ *two thousand dollars (\$2,000), 50 percent of which shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense*, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, “elder” means any person who is 65 years of age or older.

(h) As used in this section, “dependent adult” means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, “caretaker” means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

1 (j) Nothing in this section shall preclude prosecution under both
2 this section and Section 187 or 12022.7 or any other provision of
3 law. However, a person shall not receive an additional term of
4 imprisonment under both paragraphs (2) and (3) of subdivision
5 (b) for any single offense, nor shall a person receive an additional
6 term of imprisonment under both Section 12022.7 and paragraph
7 (2) or (3) of subdivision (b) for any single offense.

8 (k) In any case in which a person is convicted of violating these
9 provisions, the court may require him or her to receive appropriate
10 counseling as a condition of probation. Any defendant ordered to
11 be placed in a counseling program shall be responsible for paying
12 the expense of his or her participation in the counseling program
13 as determined by the court. The court shall take into consideration
14 the ability of the defendant to pay, and no defendant shall be denied
15 probation because of his or her inability to pay.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.